

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IVAN VARGAS ARELLANO,
Petitioner,
v.
R. FOX,
Respondent.

Case No. [18-cv-00623-WHO](#) (PR)

ORDER TO SHOW CAUSE

Dkt. Nos. 7 and 13

INTRODUCTION

Petitioner Ivan Vargas Arellano seeks federal habeas relief from his state convictions. The petition for such relief has been reviewed under 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases and has been found to state cognizable claims. Accordingly, on or before **August 14, 2018**, respondent shall file an answer or a dispositive motion in response to the habeas petition.

BACKGROUND

In 2014, a Santa Clara County Superior Court jury found Arellano guilty of assault, burglary, and vandalism. A sentence of 16 years was imposed. *People v. Vargas*, No. H041706, 2017 WL 2200217, at *1, 3 (Cal. Ct. App. May 19, 2017). He appealed. The state appellate court affirmed the convictions but remanded the case for resentencing. (*Id.* at *9.) It is not clear at this time whether petitioner was in fact resentenced, or if he was,

1 what sentence was imposed.

2 **DISCUSSION**

3 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
4 in custody pursuant to the judgment of a State court only on the ground that he is in
5 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
6 § 2254(a). A district court considering an application for a writ of habeas corpus shall
7 “award the writ or issue an order directing the respondent to show cause why the writ
8 should not be granted, unless it appears from the application that the applicant or person
9 detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate
10 only where the allegations in the petition are vague or conclusory, palpably incredible, or
11 patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

12 As grounds for federal habeas relief, Arellano claims (i) the admission of expert
13 testimony and prejudicial hearsay evidence violated his right to due process; and
14 (ii) defense counsel rendered ineffective assistance. When liberally construed, these
15 claims are cognizable on federal habeas review.

16 **CONCLUSION**

17 1. The Clerk shall serve a copy of this order, the petition and all attachments
18 thereto, on respondent and respondent’s counsel, the Attorney General for the State of
19 California. The Clerk shall also serve a copy of this order on petitioner.

20 2. On or before **August 14, 2018**, respondent shall file with the Court and serve on
21 petitioner, an answer conforming in all respects to Rule 5 of the Rules Governing Section
22 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on
23 petitioner’s cognizable claims. Respondent shall file with the answer and serve on
24 petitioner a copy of all portions of the state trial record that previously have been
25 transcribed and that are relevant to a determination of the issues presented by the petition.

26 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
27 with the Court and serving it on respondent’s counsel within thirty (30) days of the date the
28 answer is filed.

1 4. In lieu of an answer, respondent may file, on or before **August 14, 2018**, a
2 motion to dismiss on procedural grounds, as set forth in the Advisory Committee Notes to
3 Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion,
4 petitioner shall file with the Court and serve on respondent an opposition or statement of
5 non-opposition within thirty (30) days of the date the motion is filed, and respondent shall
6 file with the Court and serve on petitioner a reply within fifteen (15) days of the date any
7 opposition is filed.

8 5. Petitioner is reminded that all communications with the Court must be served on
9 respondent by mailing a true copy of the document to respondent's counsel.

10 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
11 Court and respondent informed of any change of address and must comply with the
12 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this
13 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

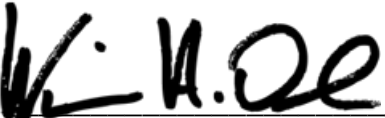
14 7. Upon a showing of good cause, requests for a reasonable extension of time will
15 be granted provided they are filed on or before the deadline they seek to extend.

16 8. Petitioner's motion to proceed *in forma pauperis* is GRANTED. (Dkt. Nos. 7
17 and 13.)

18 9. The Clerk shall terminate Dkt. Nos. 7 and 13.

19 **IT IS SO ORDERED.**

20 **Dated:** May 30, 2018

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22 WILLIAM H. ORRICK
23 United States District Judge
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